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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

13 WELL'S FARGO BANK, N.A.,

14 Plaintiff,

15 vs.

16 LAS VEGAS DEVELOPMENT GROUP LLC;
 17 DOES 1 through 10; and ROE BUSINESS
 ENTITIES 1 through 10, inclusive,

18 Defendants.

Case No. 2:16-cv-00223-GMN-VCF

**STIPULATION AND ORDER TO STAY
 LITIGATION PENDING FINAL
 RESOLUTION OF PETITION(S) FOR
 WRIT OF CERTIORARI TO UNITED
 STATES SUPREME COURT**

19 Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo"), and Defendant Las Vegas
 20 Development Group, LLC ("LVDG"), by and through their respective undersigned counsel of
 21 record, hereby stipulate as follows:

22 1. This lawsuit involves the parties seeking quiet title/declaratory relief and other
 23 claims related to a non-judicial homeowner's association foreclosure sale conducted on a
 24 Property pursuant to NRS Chapter 116.

25 2. Currently pending before this Court is LVDG's Motion to Dismiss filed on March
 26 18, 2016 (ECF No. 8). Additionally, Wells Fargo filed a Motion for Summary Judgment (ECF
 27 No. 23), which is not fully briefed.

28 3. On August 12, 2016, the Ninth Circuit issued its decision on appeal in *Bourne*

1 *Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1159-60 (9th Cir. 2016) holding that
 2 NRS Chapter 116 is facially unconstitutional. The Court of Appeals issued its mandate in the
 3 appeal on December 14, 2016, vacating and remanding the judgment to the United States District
 4 Court, District of Nevada.

5 4. On January 26, 2017, the Nevada Supreme Court issued its decision in *Saticoy Bay*
 6 *LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Div. of Wells Fargo Bank, N.A.*,
 7 133 Nev. Adv. Op. 5, ___ P.3d ___, 2017 WL 398426 (Nev. Jan. 26, 2017), holding, in direct
 8 contrast to *Bourne Valley*, that no state action supported a challenge under the Due Process
 9 Clause of the United States Constitution.

10 5. The *Saticoy Bay* decision by the Nevada Supreme Court conflicts directly with
 11 Ninth Circuit's ruling in *Bourne Valley*, making the issue appropriate for consideration by the
 12 United States Supreme Court. *See* Sup. Ct. Rule 10(a) & (b) (noting that the High Court will
 13 consider review when "a United States court of appeals has . . . decided an important federal
 14 question in a way that conflicts with a decision by a state court of last resort * * * [or] a state
 15 court of last resort has decided an important federal question in a way that conflicts with the
 16 decision of . . . a United States court of appeals.")

17 6. Both parties in *Bourne Valley* and *Saticoy Bay* believe their lawsuits should be
 18 resolved and are seeking review of the state action issue in the United States Supreme Court.
 19 *Bourne Valley*'s deadline to file its petition for writ of certiorari of the Ninth Circuit's *Bourne*
 20 *Valley* decision is March 6, 2017 pursuant to an order granting an extension of time. *See Bourne*
 21 *Valley Court Trust v. Wells Fargo Bank, NA.*, United States Supreme Court Case No. 16A753.
 22 Wells Fargo's deadline to file its petition for writ of certiorari of the Nevada Supreme Court's
 23 *Saticoy Bay* decision is April 26, 2017. Thus, the parties believe that the stay requested herein is
 24 appropriate.

25 7. On February 8, 2017, the Nevada Supreme Court issued an order staying its
 26 issuance of the remittitur pending the filing of a petition for a writ of certiorari with the United
 27 States Supreme Court, and if a petition is filed, the stay of the remittitur will remain in effect until
 28 final disposition of the certiorari proceedings before the United States Supreme Court.

1 8. To determine if a continued stay is appropriate, the Court considers (1) damage
 2 from the stay; (2) hardship or inequity that befalls one party more than the other; and (3) the
 3 orderly course of justice. *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d
 4 1059, 1066 (9th Cir. 2007) (setting forth factors). Here, the factors support a stay of litigation.

5 a. Damage from Stay: Any damage from a temporary stay in this case will be
 6 minimal if balanced against the potential fees, costs, and time which would surely ensue in this
 7 matter if litigation were allowed to continue that could be mooted by a decision in *Bourne Valley*
 8 certiorari proceedings. Indeed, the parties will both be enabled to avoid the cost and expense of
 9 continued legal proceedings in light of what is unsettled law to say the least. Moreover, the Court
 10 will be relieved of expending further time and effort until the conflict between the circuit and
 11 Nevada Supreme Court is resolved. Thus, a stay will benefit all parties involved herein.

12 b. Hardship or Inequity: There will be no significant hardship or inequity that befalls
 13 one party more than the other. This relatively equal balance of equities results from the need for
 14 both parties to have finality, given the split in the state and federal court decisions. Any hardship
 15 would be equal in terms of resources expended without a stay. A stay prevents this expenditure
 16 for all parties.

17 c. Orderly Course of Justice: At the center of this case is an association foreclosure
 18 sale under NRS Chapter 116. The outcome of the petitions for writ in *Bourne Valley* and/or
 19 *Saticoy Bay* have the potential to affirm or overturn either case. Without a stay, the parties will
 20 expend resources that will be unnecessary if either or both petitions are granted. A stay would
 21 also avoid a likely appeal from any subsequent judgment in this case. A temporary stay would
 22 substantially promote the orderly course of justice in this case. A stay will avoid the moving
 23 forward without final resolution of the federal issues and the state court / federal court conflict.

24 9. The parties agree that all proceedings, other than as set forth in paragraph 10
 25 below, in the instant case are stayed pending final resolution of the *Bourne Valley* and/or *Saticoy*
 26 *Bay* certiorari proceedings before the United States Supreme Court. If the Court enters an order
 27 staying this case, Wells Fargo's Motion for Summary Judgment (ECF No. 23) shall be withdrawn
 28 and may be refiled after the stay is lifted. Otherwise, Wells Fargo shall have fourteen (14) days

1 following an order denying the stay in which to file its reply in support of its motion.

2 10. LVDG's pending Motion to Dismiss [ECF #8] is not withdrawn and may be ruled
3 upon at the discretion of the Court.

4 11. Defendant LVDG shall be required to keep current on all property taxes and
5 assessments, HOA dues, and to reasonably maintain the property at issue. LVDG shall also be
6 required to provide proof of payment upon reasonable notice to counsel for Wells Fargo.

7 12. Defendant LVDG shall be prohibited from selling or encumbering the property
8 unless otherwise ordered by the Court.

9 13. Plaintiff Wells Fargo is prohibited from conducting a foreclosure sale on the
10 property unless otherwise ordered by the Court.

11 14. Either party may file a written motion to lift stay at any time for either party
12 determines it appropriate.

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Dated: February 13, 2017.

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3 By: /s/ Wayne Klomp

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Dated: February 13, 2017.

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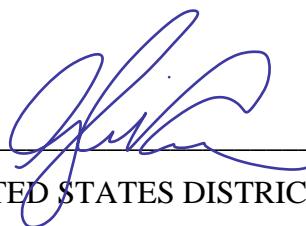
8 ORDER
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10 In accordance with the foregoing, **IT IS HEREBY ORDERED THAT** the parties' Stipulation
to Stay the case is **GRANTED**.

11 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment, (ECF No. 23),
12 is **DENIED** without prejudice with leave to refile within twenty-one days after the stay is lifted.

13 **IT IS FURTHER ORDERED** that, beginning on August 14, 2017, the parties must file a joint
status report updating the Court on the status of this case every one-hundred and eighty days.
Along with this joint status report, Defendant LVDG shall submit a statement affirming all
expenses necessary to maintain the property, including but not limited to, timely and full
payment of all homeowner association assessments, property taxes, and property insurance
premiums due and owing or past due at any time during the effective period of this Stay are
current and up to date.

18 **IT IS FURTHER ORDERED** that this Order does not prevent the parties from continuing to
19 engage in settlement conference negotiations with the assistance of the magistrate judge.

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22 
UNITED STATES DISTRICT JUDGE
23 DATED: February 15, 2017
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